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Masa ak Nangkai & Ors v Sgt Edwin Nancha & Anor

HIGH COURT (SRI AMAN) — SUIT NO 22–01–96–I(SG) OF 1996
CLEMENT SKINNER J
30 JUNE 2004

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Criminal Procedure — Arrest — Wrongful arrest — Wrongful detention — Whether police acted within provision of Criminal Procedure Code — Whether police has reasonable and probable cause to effect arrest — Whether police received credible information or held reasonable suspicion that first plaintiff was concerned in seizable offence — Whether plaintiff entitled to damages — Criminal Procedure Code s 23(1)(a)

C

Tort — Wrongful arrest — Damages — Whether prima facie proof of offence necessary before effecting arrest — Whether detention for eight days lawfully effected by order of Magistrate — Criminal Procedure Code s 117

D

The first plaintiff brought this action against the second defendant alleging that his arrest, without warrant, on 19 September 1995 by the first defendant and the subsequent detention for eight days was without any just and reasonable cause and therefore wrongful. On the date of trial only the first plaintiff proceeded with the case.

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On 6 December 1994 the wife of one David ak Beli ('the deceased') lodged a police report that her husband had been missing since 4 December 1994 after he had gone to collect durians at Bukit Tunggal. Based on information received, the first defendant arrested the first plaintiff at Pantu Town on 19September 1995. The investigating officer ASP Helmi received information

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that the first plaintiff and the five other plaintiffs were connected with the missing person report and that the missing person had been murdered. The information also stated that all the plaintiff, were present at a drinking session at Bukit Tunggal when a fight took place which involved the deceased, after which he was reported as missing. ASP Helmi testified that after the case was

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re-classified from missing person to murder, he went to Bukit Tunggal in early 1995 and recovered certain items which were subsequently identified by the deceased's wife as belonging to him. A team of scuba-divers who went to a swamp in Bukit Tunggal to locate the deceased's body recovered a *parang* instead. The first plaintiff was released from custody after eight days as there was insufficient evidence against him. However the police had received

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information as to where the deceased's body was believed to be buried but the police were unable to act as they did not have the necessary forensic expertise to exhume a body and the police was also concerned about the Adat Iban or customs regarding disturbing a grave.

I

Held, dismissing the action with costs:

(1) Whether there was wrongful arrest and detention and whether the plaintiff was entitled to damages would depend on whether the police had acted

within the provision of s 23(1)(a) the Criminal Procedure Code ('CPC') (see paras 25 and 26).

(2) To rely on this section the police must show that they had reasonable and probable cause to effect the arrest in that they had received credible information or held a reasonable suspicion that the first plaintiff was involved in a seizable offence (see paras 27–30); *Ramly & Ors v Jaafar* [1968] 1 MLJ 209 followed.

(3) There is no requirement to establish *prima facie* proof of the offence before the first plaintiff could be arrested (see paras 31–36); *Shaaban & Ors v Chong Fook Kam & Anor* [1969] 2 MLJ 219 followed.

(4) By insisting that David ak Beli's body must be found and that the police must prove that the first plaintiff killed him and had the intention to cause his death before the first plaintiff could be arrested, the first plaintiff is not looking at the position at the starting point of police investigations as it should be, but at the end and in so doing has set a much stiffer test than the reasonable suspicion, which is the foundation of the powers in s 23(1)(a) of CPC (see para 31).

(5) There were sufficient facts, when viewed collectively, for the police to have acted on reasonable suspicion and to have arrested the first plaintiff (see paras 34–36).

(6) The detention in police custody for eight days was lawful as the first plaintiff was remanded on the order of a magistrate under s 117 of CPC (see para 37).

(7) In the event the arrest was wrongful, nominal damages of RM5,000 as general damages awarded (see para 38).

(8) No award for special damages would be made as the first plaintiff did not prove his items of loss (see para 39).

[**Bahasa Malaysia summary**

Plaintif pertama telah memulakan tindakan terhadap defendan kedua dengan mengatakan tangkapan ke atas beliau, tanpa waran, pada 19 September 1995 oleh defendan pertama dan seterusnya penahanan selama lapan hari adalah tanpa sebab yang adil dan munasabah dan oleh itu adalah salah. Plaintif telah memulakan kes hanya pada tarikh perbicaraan.

Pada 6 Disember 1994 isteri kepada David ak Beli ('si mati') telah membuat laporan polis tentang kehilangan suami beliau semenjak 4 Disember 1994 selepas dia pergi mengambil durian di Bukit Tunggal. Berdasarkan maklumat yang diperoleh, defendan pertama telah menangkap plaintif pertama di Pekan Pantu pada 19 September 1995. ASP Helmi, pegawai penyiasat, telah menerima maklumat bahawa plaintif pertama dan lima plaintif yang lain dikaitkan dengan laporan orang yang hilang dan orang yang hilang itu telah dibunuh. Maklumat

juga mengatakan bahawa kesemua plaintif, hadir di sesi minum di Bukit Tunggal apabila berlakunya pergaduhan yang melibatkan si mati, yang kemudiannya dilaporkan hilang. ASP Helmi telah memberi keterangan bahawa setelah kes itu diklasifikasikan semula daripada orang yang hilang ke pembunuhan, dia telah pergi ke Bukit Tunggal pada awal 1995 dan telah menjumpai beberapa barang yang kemudiannya dikenal-pasti oleh isteri si mati menjadi milik si mati. Sepasukan penyelam yang telah pergi ke paya di Bukit Tunggal untuk mencari mayat si mati telah menjumpai sebilah parang. Plaintif pertama telah dibebaskan daripada tahanan selepas lapan hari kerana tiada keterangan yang mencukupi ke atasnya. Walau bagaimanapun, pihak polis telah menerima maklumat di mana mayat si mati dipercayai ditanam tetapi pihak polis tidak berupaya bertindak memandangkan mereka tidak mempunyai pakar forensik untuk menggali semua mayat dan khuatir tentang Adat Iban atau amalan berkenaan mengganggu kubur.

Diputuskan, menolak tuntutan tersebut dengan kos:

(1) Sama ada terdapat penangkapan dan penahanan yang salah atau sama ada plaintif berhak kepada ganti rugi bergantung kepada sama ada pihak polis telah bertindak di dalam lingkungan peruntukan s 23(1)(a) Kanun Acara Jenayah ('KAJ') (lihat perenggan 25 dan 26).

(2) Untuk bergantung kepada seksyen ini pihak polis mestilah menunjukkan mereka mempunyai sebab yang munasabah dan berkemungkinan untuk membolehkan tangkapan iaitu maklumat yang boleh dipercayai atau rasa syak yang munasabah bahawa plaintif pertama terlibat di dalam kesalahan yang boleh ditangkap (lihat perenggan 29–30); (*Ramly & Ors v Jaafar* [1968] 1 MLJ 209 diikut).

(3) Tiada sebarang keperluan untuk membuktikan bukti *prima facie* kesalahan itu sebelum plaintif pertama boleh ditangkap (lihat perenggan 31–36); *Shaaban & Ors v Chong Fook Kam & Anor* [1969] 2 MLJ 219 diikut.

(4) Dengan menegaskan bahawa mayat David ak Beli mesti dijumpai dan pihak polis mesti membuktikan plaintif pertama membunuh beliau dan mempunyai niat untuk menyebabkan kematiannya sebelum plaintif pertama boleh ditangkap, plaintif pertama bukan melihat kepada situasi pada titik permulaan penyiasatan polis seperti yang sepatutnya, tetapi pada akhirnya dan dengan berbuat demikian telah menetapkan ujian yang lebih berat daripada rasa syak yang munasabah, yang merupakan dasar kepada kuasa di dalam s 23(1)(a) KAJ (lihat perenggan 31).

(5) Terdapat fakta-fakta yang mencukupi apabila dilihat secara kolektif, untuk pihak polis bertindak berdasarkan rasa syak yang munasabah dan menangkap plaintif pertama (lihat perenggan 34–36)

(6) Penahanan di dalam jagaan polis selama lapan hari adalah sah memandangkan plaintif pertama telah ditahan atas arahan majistret dibawah s 117 KAJ (lihat perenggan 37).

(7) Di dalam keadaan sekiranya tangkapan yang dibuat adalah salah, ganti rugi nominal sebanyak RM5,000 sebagai ganti rugi am perlu diawardkan (lihat perenggan 38).

(8) Tiada award untuk ganti rugi khas dibuat kerana plaintif pertama tidak membuktikan butir-butir kerugiannya (lihat perenggan 39).

Notes

For cases on wrongful arrest, see 5(1) *Mallal's Digest* (4th Ed, 2004 Reissue) paras 746–749

For cases on damages for wrongful arrest, see 12 *Mallal's Digest* (4th Ed, 2002 Reissue) para 1573

For cases on extention of detention, see 5(1) *Mallal's Digest* (4th Ed, 2004 Reissue) paras 710–711

For arrests and rights and remedies of arrested person, see 18 *Halsbury's Laws of Malaysia*, paras [310.142]–[310.158]

Cases referred to

Chong Fook Kam & Anor v Shaaban & Ors [1968] 2 MLJ 53 (refd)
Ramly & Ors v Jaafar [1968] 1 MLJ 209 (folld)
Shaaban & Ors v Chong Fook Kam & Anor [1969] 2 MLJ 219 (folld)
Tan Kay Teck & Anor v The Attorney General [1957] MLJ 237 (refd)

Legislation referred to

Criminal Procedure Code s 23(1)(a), 117 Penal Code s 304A
Evidence Act 1950 s 114(g)
Road Traffic Ordinance 1958 s 34A

Nicholas Gunjew (Gunjew Gaik & Co) for the plaintiffs.
Amir Hamzah (Jabatan Peguam Negara, Kuching) for the defendants.

Clement Skinner J:

[1] This action was commenced by the first plaintiff Masa ak Nangkai against the Government of Malaysia (the second defendant) alleging that his arrest, without warrant, on the 19 September 1995 and subsequent detention for eight days was without any just and reasonable cause and therefore, unlawful. He was arrested by the first defendant, Sgt Edwin Nancha. By way of relief the first plaintiff is seeking special and general damages. At the date of his arrest the first plaintiff was, and in fact continues to remain until today, the Tuai Rumah of Rumah Masa, Tekuyong, Pantu, Sri Aman.

[2] The trial of this action lasted over two days, commencing on 13 April 2004 and concluding the next day. The first plaintiff gave evidence on his own behalf and called no other witnesses in support of his claim. The defendants called 4 witnesses.

[3] Before setting out the facts and evidence I should mention that there are six plaintiffs in this action, but when the case came up for hearing on 13April 2004, the second, third, fourth, fifth and sixth plaintiffs did not appear for the trial. Counsel for the plaintiffs informed the court that the second plaintiff Noel ak Awel passed away subsequent to the filing of this action, but his next of kin have not obtained letters of administration to continue with this action on behalf of his estate. As far as the third to sixth plaintiffs are concerned, they simply did not appear to prosecute their claim.

[4] The undisputed or indisputable facts and the allegations in this case are as follows.

[5] On 6 December 1994, one Sitie ak Kaling lodged a report at the Pantu Police Station stating that on 4 December 1994 her husband, one David ak Beli had gone to collect durians at a place called Bukit Tunggal, but as he had not returned home she lodged the report believing he was lost or had died. Her police report is number PT/RPT/149/94. I shall hereafter refer to it as the Panru Report 149/94 (exh D3).

[6] Following information received by the police connecting the first plaintiff to Panru Report 149/94 and investigations conducted by the police at Bukit Tunggal, the first plaintiff was arrested at Pantu town on 19 September 1995 by the first defendant Sgt. Edwin Nancha (DW1) and a police party consisting of L/Kpl Andrew Liaw and L/Kpl Patrick Ringgu. Sgt. Edwin Nancha (DW1) had been instructed by the Investigating Officer ASP Helmi Bohari, to effect the arrest. The evidence shows that on arresting him, Sgt. Edwin Nancha informed the first plaintiff that he was being arrested in connection with Pantu Report 149/94. The circumstances surrounding his arrest will be gone into in more detail when I discuss the evidence adduced in this case.

[7] On being arrested, the first plaintiff was taken to the Sri Aman Police Station and put into the lock-up there, following a police report SA/RPT/929/95 (exhibit Dl) being lodged by L/Kpl Liaw about the arrest. Although the evidence is not very clear on the point, it seems that on the same day of his arrest the first plaintiff was produced before the Magistrate, Sri Aman who ordered that he be remanded in custody for eight days until 26 September 1995 for investigation into the death of David ak Beli. At the expiration of the period of remand, the first plaintiff was released from custody and no charges have been preferred against him.

[8] To date, the whereabouts of David ak Beli has not been positively ascertained although the police say they have received information recently about where he is allegedly buried.

[9] Whilst the first plaintiff alleges that his arrest and subsequent detention was unlawful, the defendants say that his arrest was not wrongful as it was effected for just and reasonable cause, and his subsequent detention for eight days was lawful as it was sanctioned by a specific order of a magistrate under s 117 of CPC.

[10] The evidence which was adduced by the parties in support of their respective case were these.

With regard to his arrest, the first plaintiff testified that he was arrested by the police at his own longhouse at Tekuyong which is some two hours boat ride from Pantu, after which he travelled alone to Pantu town using his own longboat while the police used their own longboat. According to the first plaintiff, before beginning his journey he placed another outboard engine and two chain-saws in his longboat. When he arrived at Pantu the first plaintiff said he did not ask anyone to look after his longboat 'as the police told me that they will send me back'. According to the first plaintiff on his being released from police custody after eight days, he went to the Pantu jetty and found his longboat missing. In addition to the two outboard engines and two chain-saws he had mentioned earlier, the first plaintiff also claimed to have had two gunny sacks of pepper in his longboat. At this juncture it is pertinent to mention that the first plaintiff's evidence about being arrested at his longhouse at Tekuyong is contradicted by his own pleadings where, in paragraph 1 of his statement of claim, he expressly pleaded that he was arrested at Pantu Bazaar. It is trite that a party is bound by his pleadings and may not make out in court a case, which represents a departure from his pleadings.

[11] With regard to the reasons for his arrest, the first plaintiff said that he did not know, and had never met David ak Beli before. He also said that he did not know David ak Beli was missing and only found out from the police during his detention that David ak Beli was missing.

[12] With regard to the loss and damage allegedly suffered by him, the first plaintiff testified that when he arrived back at his longhouse after he was released from police custody, he found 'all the things I had planted were destroyed and my three cows were dead'. However, the first plaintiff did not say what 'all the things' he had planted were, in what quantities they were planted and where he had planted them. The first plaintiff also did not give any evidence about how 'all the things' he had planted came to be destroyed ie through destruction by animals, pestilence, natural causes, deliberate destruction by others or any otherwise. It must also be pointed out that nowhere in his pleadings are any animals or the three cows mentioned.

[13] The first plaintiff also testified that before his arrest he was paid RM300 monthly by a sawmill company, but after his release the company terminated his services without giving him any reasons for doing so.

[14] The first plaintiff also said that after his arrest and release he felt ashamed 'as people did not respect me as a Tuai Rumah'. Again, the first plaintiff did not give evidence about who these 'people' were who he was referring to that did not respect him, or what they had done which he regarded to be 'disrespectful'. But in his cross-examination the first plaintiff agreed that he was still the Tuai Rumah of Rumah Masa and has remained the Tuai Rumah until today. In all, the first plaintiff said he has been Tuai Rumah for some 30years now and that even after his arrest and detention he still enjoys the confidence and support of his longhouse folk as well as that of the other people from other longhouses. The first plaintiff also agreed in cross-examination that all his longhouse folk respected him, but that it is he who feels ashamed and feels that he has lost dignity as a Tuai Rumah.

[15] Before turning to the evidence adduced by the defendants in support of their case, I must draw attention to the fact that in his statement of claim the first plaintiff claimed monetary loss by way of special damages under some seven items of claim. However, the first plaintiff did not adduce any evidence at all to prove his losses claimed as special damages.

[16] I now turn to the evidence for the defendants.

[17] As far as the arrest of the first plaintiff is concerned, the first defendant, Sgt Edwin Nancha (DW1) testified that on 19 September 1995 he was performing duties as an Assistant Investigation Officer at Sri Aman Police Station when he arrested the first plaintiff at Pantu town.

[18] With regard to the reason for the first plaintiff's arrest, Sgt. Edwin Nancha said he received instructions from the then Investigating Officer ASP Helmi Bohari to do so as ASP Helmi had received information that the first plaintiff and the other five persons named as plaintiffs were connected to Pantu Report 149/94, and the information received was to the effect that the missing person had been murdered.

[19] The then Investigating Officer, ASP Helmi Bohari (now DSP) (DW3) also gave evidence regarding the arrest. ASP Helmi (DW3) testified that from 1989 until 1996 he served as the District Crime Officer at Sri Aman. He said Pantu Report 149/94 was initially treated as a missing person's report which was handled by the officer commanding station (OCS) at Pantu, but he took over as the Investigating Officer after it was re-classified as a murder case following information received by him from the public.

[20] According to ASP Helmi, he instructed Sgt Edwin Nancha to arrest the first plaintiff and the other five plaintiffs based on information he received from the public, which he regarded as reliable, that the first plaintiff and the others were present at a drinking session at Bukit 15 Tunggal when a fight took place which involved David ak Beli, after which he was reported as missing.

[21] ASP Helmi testified that after he took over investigations, he visited Bukit Tunggal in early 1995 with a police party to conduct investigations, as a result of which they recovered three items: one side of a shoe, a shirt and a belian post. The shoe and shirt were subsequently identified by David ak Bell's wife as belonging to David. ASP Helmi also testified that some time in 1995 a team of scuba-divers were sent into a swamp at Bukit Tunggal to try to locate David ak Beli's body but without success. Instead a 'parang' was recovered.

[22] ASP Helmi said the first plaintiff was released from custody after eight days as there was insufficient evidence against him. However, according to ASP Helmi, since his transfer to Kuching, the police has received information regarding where David ak Beli's body is believed to be buried.

[23] At this juncture it should be mentioned that while ASP Helmi said that it was one side of a shoe that was recovered at Bukit Tunggal, Kpl Andrew Liaw Nyit Liung (DW2) described it as a slipper.

[24] The present Investigating Officer into Pantu Report 149/94 is ASP Madinal Bin Hassan (DW4) who is presently the officer in charge of the Criminal Investigation Department at Sri Aman. He said he took over as Investigating Officer in October 2003. ASP Madinal said the police had received information as to where David ak Beli is buried and further specific instructions on how the case is to proceed is awaited from CID Headquarters. According to ASP Madinal the police will have to be cautious in taking further steps in this case because the police here do not have the necessary forensic expertise to exhume a body, and, Adat Iban or customs regarding disturbing a grave will also have to be consulted. So much for the evidence adduced in this case.

[25] In my judgment the decision in this case will turn upon whether the police have acted within the provisions of s 23(i)(a) of the Criminal Procedure Code (the 'CPC') which reads as follows:

> 'Any police officer or penghulu may without an order from a magistrate and without a warrant arrest-
>
> (a) any person who has been concerned in any offence committed anywhere in Malaysia which is a sizeable offence under any law in force in that part of Malaysia in which it was committed or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned'

[26] In the light of the facts relied on by ASP Helmi to justify the arrest of the first plaintiff, I agree with Mr Gunjew counsel of the first plaintiff that the defendants will only be able to rely on s 23(i)(a) of CPC if they can show that they had reasonable and probable cause to effect the arrest in that the police received credible information or held a reasonable suspicion that the first plaintiff was concerned in a seizable offence.

[27] In deciding whether the police had reasonable and probable cause to effect the arrest, useful reference may be made to the decision in *Ramly & Ors v Jaafar* [1968] 1 MLJ 209 where the Federal Court held that 'the question whether there was reasonable and probable cause must be determined objectively on the evidence before the Court' (as reported in the headnotes). Similar views were expressed by Whyatt CJ in *Tan Kay Teck & Anor v The Attorney General* [1957] MLJ 237, where in having to decide whether a police officer is entitled to arrest a person without a warrant if he received a reasonable complaint that such person has been concerned in an offence under s 347 of the Penal Code, the learned judge said:

> 'It was contended on behalf of the petitioners that in determining whether a complaint is reasonable, an objective and not a subjective test should be applied and this contention is in my opinion clearly sound. As Lord Goddard observed in *Tims v John Lewis & Co* [1951] 2 KB 459, 472, 'The question whether there was a reasonable or probable cause is not, I think, to be determined subjectively, as has been suggested. It is a question which objectively the Court has to decide on the evidence before it'. Lord Goddard was speaking in that case of the reasonable or probable cause required at common law to justify an arrest without warrant of a person suspected of felony but the subject is in *pari materia* with the arrest under statutory powers 30 upon a reasonable complaint and in my view the same principles apply'.

[28] Reverting to the facts of our case, it was the submission of counsel for the first plaintiff that applying the objective test, it cannot be said that the police had met the test of having reasonable and probable cause to arrest the first plaintiff because whilst the police had classified David's case as a sizeable offence, namely, murder, the police were not able to prove that a sizeable offence had been committed since:

(a) the *actus reus* element of murder had not been proved as firstly, David's body had not been found and secondly, the act of killing must be proved beyond a reasonable doubt; and

(b) there must be proof of the *mens rea* element ie intention to kill, but as the first plaintiff was never charged for the crime this element was also not proved.

[29] I regret I do not agree with the submission of counsel for the first plaintiff. I find that counsel has applied the wrong test to determine whether there was reasonable or probable cause. In effect what Mr Gunjew submits is that before the police can arrest the first plaintiff the essential ingredients of the offence of murder ie the *actus reus* of killing and the mens rea element of intention to cause death, must be sufficiently proved. Put in another way, it is my view that there is no requirement to establish *prima facie* proof of the offence before the first plaintiff could be arrested.

[30] With respect I think counsel for the first plaintiff has set too stiff a test for the police. It must not be overlooked that s 23(i)(a) of CPC states that a police officer may arrest without warrant if credible information has been received or a reasonable suspicion exists that a person has been concerned in an offence which is a sizeable offence. The 'suspicion in-its ordinary meaning is a state of conjecture or surmise where proof is lacking: 'I suspect but I cannot prove'. Suspicion arises at or near the starting point of an investigation, of which the obtaining of prima facie proof is the end. When such proof has been obtained, the police case is complete; it is ready for trial and passes on to its next stage. It is indeed desirable as a general rule that an arrest should not be made until the case is complete. But if arrest before that is forbidden, it could seriously hamper the police. To give power of arrest on reasonable suspicion does not mean that it is always or even ordinarily to be exercised. It means that there is an executive discretion'.

[31] Applying what was said in *Shaaban*'s case to the submission of counsel for the first plaintiff, it is clear to me that by insisting that David ak Beli's body must be found and that the police must prove that the first plaintiff killed him and had the intention to cause his death, before the first plaintiff could be arrested, counsel for the first plaintiff is not looking at the position at the starting point of police investigations as it should be, but at the end and in so doing has set a much stiffer test than the reasonable suspicion, which, as pointed out by the Privy Council, is the foundation of the power in s 23(i)(a) of CPC.

[32] Looking at the facts objectively, can it be said that the police had reasonable suspicion to arrest the first plaintiff m accordance with the test applied in *Shaaban*'s case? In my judgment the question must be answered in the affirmative. There was already the Pantu Report 149/94 indicating that David ak Beli had gone missing after going to Bukit Tunggal and that he was feared dead. There was information received by ASP Helmi Bohari which he considered reliable and which indicated that the first plaintiff and the five persons named as plaintiffs in this case were present at a drinking session at Bukit Tunggal when a fight took place which involved David ak Beli, after which he was reported as missing. There is also the evidence of ASP Helmi that he went to Bukit Tunggal to words 'reasonable suspicion' appearing in s 23(i)(a) were explained by the Privy Council in *Shaaban & Ors v Chong Fook Kam & Anor* [1969] 2 MLJ 219. It became necessary for the Privy Council to do so in the following circumstances. In that case the respondents (a driver and attendant of a lorry) were arrested and detained by the police. The police suspected that one or other of them was driving the lorry from whose trailer timber fell which hit the windscreen of a car and two men in the car causing death to one of them. The lorry did not stop. The respondents who were interrogated after their arrest denied that they were at the place of the accident In the Federal Court Suffian FCJ (reversing the decision of the High Court)

held that the information available to the police was insufficient to prove prima facie a case against the respondents under s 304A of the Penal Code or under s 34A of the Road Traffic Ordinance 1958. Accordingly the Federal Court held that the respondents had been wrongfully arrested and awarded them RM2,500 each for false imprisonment. On appeal to the Privy Council, the board held, on this part of the case, that the test adopted by the Federal Court was incorrect as the police were entitled to arrest if a reasonable suspicion existed of the respondents being concerned in the offence of reckless driving and dangerous driving causing death; it was unnecessary for the police to show that there was prima facie proof of such offence.

[33] Lord Devlin explained that there was no need to prove a *prima facie* case because that was too stiff a test in view of the words 'reasonable suspicion' found in s 23(i)(a) of CPC which his Lordship pointed out 'is the foundation of the power given in s 23(i)(a) of CPC'. Lord Devlin went on to say (at pg 221):

> … investigate into David's disappearance and there recovered a shoe and shirt which were identified by David ak Beli's wife as belonging to him.

[34] In my opinion, the above facts when viewed collectively were sufficient to arouse the suspicion of any reasonable person that the first plaintiff was concerned in the alleged murder of David ak Beli.

[35] Counsel for the first plaintiff has submitted that as the person or persons who gave information about the first plaintiff to the police did not come to give evidence, an adverse inference under s 114 (g) of the Evidence Act 1950 should be drawn against the police. I regret I do not agree. As stated in *Shaaban's* case, in showing reasonable suspicion the defendants are not required to prove a prima facie case by calling witnesses and the like — what the police has to show is that they have reasonable cause to suspect and in this regard, it is my view that information received which is regarded by the police as reliable implicating the first plaintiff with the crime coupled with their own investigations at Bukit Tunggal is certainly a reasonable basis for suspicion.

[36] For all the above reasons I am satisfied that reasonable suspicion existed for the first plaintiffs arrest by the police and his arrest was lawful as being in accordance with s 23(i)(a) of CPC.

[37] With regard to the first plaintiff's subsequent detention in police custody for eight days, there is high authority for saying that the first plaintiff's detention was lawful as he was remanded on the order of a magistrate under s 117 of CPC. See the Federal Court's decision on the matter in *Chong Fook Kam & Anor v Shaaban & Ors* [1968] 2 MLJ 53, which was not disturbed on appeal to the Privy Council.

[38] In the result, I dismiss the first plaintiff's claim with costs. For completeness I should say that if I am wrong in what I say and it must be held that the first plaintiffs arrest was wrongful, I would only have awarded him very nominal

damages for wrongful arrest (and not his eight days of detention), limited to say, RM5,000 for the following reasons.

[39] As far as special damages are concerned the first plaintiff has failed to prove any of his loss itemised in his statement of claim. Counsel for the first plaintiff has said that the Court should not request compelling proof of ownership of longboat, engines etc. from simple longhouse folk as transactions at kampong level are not currency related. I regret counsel has not referred me to any authority that would allow me to dispense with the evidential requirement that all loss claimed as special damages must be strictly proved. Without proving his items of loss, which are claimed as special damages, the first plaintiff's claims are no better than figures plucked from the air and presented to the court.

[40] With regard to the first plaintiff's claim for general damages for shame and loss of face and dignity as a Ketua Kaum, the evidence shows otherwise. He is still the Tuai Rumah and continues to command the respect and confidence of his longhouse folk and that of other longhouses too. With regard to his claim for RM300, being the monthly sum paid to him by a sawmill company, there is absolutely no evidence that the company stopped paying him the RM300 because he was arrested. It is his own evidence that his services were terminated by the sawmill company without any reason being given for the same.

[41] To conclude, as the second, third, fourth, fifth and sixth plaintiffs did not appear to prosecute their claim and no evidence was presented on their behalf to prove their claims I find that they have not proved their case against the defendants on a balance of probabilities and so I dismiss their claims with costs.

Claims dismissed.

Reported by Vinod Kamalanathan